

**United States Department of Labor
Employees' Compensation Appeals Board**

W.S., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
NATIONAL GUARD, Greenville, KY,
Employer**

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**Docket No. 13-999
Issued: July 24, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 19, 2013 appellant filed a timely appeal from the November 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury in the performance of duty on September 27, 2012, as alleged.

FACTUAL HISTORY

On October 1, 2012 appellant, a 33-year-old surface maintenance mechanic, filed a traumatic injury claim alleging that he injured his lower back in the performance of duty on

¹ 5 U.S.C. § 8101 *et seq.*

September 27, 2012 while removing a radiator from a six-ton tractor. He described the nature of his injury as pain and stiffness.

OWCP informed appellant that no diagnosis of his condition was provided, nor was a physician's opinion as to how the incident resulted in his diagnosed condition. It explained that medical evidence must be submitted by a qualified physician and that nurse practitioners were not considered qualified physicians. Further, OWCP advised that the medical evidence must contain a valid medical diagnosis and that a finding of pain alone was insufficient, as it was a symptom and not a diagnosis.

OWCP received an attending physician's form report signed by a registered nurse. The nurse provided no diagnosis but indicated with an affirmative mark that appellant's condition was caused or aggravated by the described employment activity.

By decision dated November 8, 2012, OWCP denied appellant's claim for workers' compensation benefits. It found that the incident at work occurred as alleged, but he failed to submit medical evidence containing a diagnosis or medical evidence establishing that a diagnosed medical condition was causally related to the work incident. Further, OWCP noted that the evidence submitted was from a nurse or nurse practitioner, who is not considered a qualified physician.

On appeal, appellant submits a February 22, 2013 narrative report from the same registered nurse to address the element of causal relationship.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

ANALYSIS

OWCP accepts that on September 27, 2012 appellant was removing a radiator from a six-ton tractor while in the performance of duty. Appellant has therefore met his burden to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question that remains is whether his work activity that day caused an injury.

Appellant indicated that he had pain and stiffness in his low back, but the record contains no medical diagnosis of his condition. Further, the record contains no medical opinion on the issue of causal relationship. The only medical evidence appellant submitted to support his claim was an attending physician's form report signed by a registered nurse. A nurse, however, is not a "physician" within the meaning of FECA and is therefore not competent to offer a medical opinion on the issue of causal relationship.⁸ As a result, there is no probative medical evidence that appellant sustained an injury.

As appellant has not submitted a medical opinion from a qualified physician soundly explaining how his work activity on September 27, 2012 caused a diagnosed medical condition, appellant has failed to meet one of the essential elements of his claim. He has failed to establish the critical element of causal relationship. Accordingly, the Board will affirm OWCP's November 8, 2012 decision denying appellant's claim for benefits.

The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.⁹ The Board therefore has no jurisdiction to review the registered nurse's February 22, 2013 narrative report that appellant has submitted to the Board.

Nonetheless, appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained a traumatic injury in the performance of duty on September 27, 2012, as alleged. The medical evidence appellant submitted came from a registered nurse, who is not a physician as defined under FECA.

⁷ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Vicky L. Hannis*, 48 ECAB 538 (1997); see 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

⁹ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board